

## REMARKS

The applicant again appreciates the Examiner's thorough examination of the subject application and requests reexamination and reconsideration of the application in view of the following remarks.

In the Notice of Non-Compliant Amendment mailed May 8, 2009, the Examiner alleged that the newly submitted claims 48-51 were directed to an invention that was independent or distinct from the invention originally claimed in the subject application. To address the Notice of Non-Compliant Amendment, the applicant herein cancels claims 48-51 and adds a new claim 52 which includes elements of the applicant's previously cancelled claims 14, 15, 17, 18, and 19. To continue prosecution of withdrawn claims 48-51, the applicant has filed a divisional application that claims priority to the subject application.

In the Office Action dated September 26, 2008, the Examiner rejected claims 18 and 19 under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 5,741,260 to Songer et al. In the Office Action, the Examiner admits that Songer et al. does not disclose compressing the crimp tube in at least three locations and does not disclose compressing the crimp tube in not more than five locations. To reject claims 18 and 19, the Examiner relies on *in re Aller*, 105 USPQ 233 (CCPA 1955), to assert that where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. However, *in re Aller* related to a case in which the differences between the claimed invention and the prior art were minor differences between temperatures and concentration of an acid. MPEP 2144.05 (II)(A), which cites *in re Aller*, describes that differences in concentration or temperature will not support the patentability of subject matter

encompassed by the prior art unless there is evidence indicating such concentration or temperature is critical.

The subject invention as claimed by the applicant, however, does not relate to trivial differences in concentration or temperature over the prior art as in *in re Aller*. Rather, the subject invention as now claimed by the applicant relates to a method for crimping a crimp tube that includes, *inter alia*, the step of crimping a crimp tube in at least three but not more than five locations using a crimping tool. Since the subject invention does not differ from the prior art by mere differences in temperature or concentration, the holding of *in re Aller* is inapplicable to the claimed invention.

Moreover, the particular feature of compressing the crimp tube in at least three locations but not more than five locations is a significant range as described in the subject application at page 8, lines 12-22. As described, it is recommended that a surgeon place a minimum of three crimps C1-C3 and a maximum of five crimps along the long axis of a crimp tube.

In contrast to the subject invention, Songer et al. clearly fails to disclose the applicant's claimed range of the number of crimps in a crimp tube or any numerical range of crimps at all. Rather, Songer et al. is silent regarding the number of crimps.

Accordingly, new claim 52 is allowable over the cited prior art.

### CONCLUSION

Each of the Examiner's previous rejections have been addressed or traversed. It is respectfully submitted that the application is in condition for allowance. Early and favorable action is respectfully requested.

If for any reason this Response is found to be incomplete, or if at any time it appears that a telephone conference with counsel would help advance prosecution, please telephone the undersigned or his associates, collect in Waltham, Massachusetts at (781) 890-5678.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David W Poirier", written over a horizontal line.

David W. Poirier  
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